

No. 9(1)82-8Lab/2740.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Indo-Swiss Time Ltd., Delhi, Gurgaon Road, Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT HARYANA, FARIDABAD

Reference No. 212 of 1981

between

SHRI NAND KISHORE SHARMA, WORKMAN AND THE MANAGEMENT OF
M/S INDO-SWISS TIME LIMITED, DELHI GURGAON ROAD, GURGAON

Present :

Shri S.K. Sharma, for the workmen.

Shri A. D. Rolhatkar, for the respondent management.

AWARD

This reference No. 212 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID/GGN/46/81/34335, dated 21st July, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Nand Kishore Sharma, workman and the management of M/s Indo Swiss Time Limited, Delhi Gurgaon Road, Gurgaon. The terms of the reference was:—

Whether the termination of services of Shri Nand Kishore Sharma, was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he was appointed on 10-12-79 and terminated on 10-12-80 without any notice or chargesheet. So he is entitled for the reinstatement with continuity of service and back wages.

The case of the respondent according to the written statement, in which they have raised preliminary objections that the dispute is not industrial dispute under section 2(e) of the Industrial Disputes Act as the workman has not been terminated, discharged, dismissed or retrenched. The workman was appointed on probation for six months and his performance was not satisfactory. On the request of the workman the probation was extended upto 10-12-80 as per clause 4-b(i) of the Certified Standing Order of the Company. It is a discharge simpliciter on the last day of his probation period as the workman did not show any improvement in the probation period and this Court has no jurisdiction to entertain this reference as it is bad in law. The claimant never raised any dispute with the management prior moving the Conciliation machinery framed under the Industrial Disputes Act. The workman did not raise the dispute before the management and send the demand notice after a lapse of three months to the Conciliation Officer from where the management received the copies of the demand notice for conciliation purposes. The management took the same plea before the Conciliation Officer that the workman's probation period was over and his work was not found satisfactory. As the workman was appointed on probation there is no necessity to give any notice in advance before discharging from him service. The probation

period is meant to judge the workman's performance and it is the discretion of the management whether they confirm to discharge the probationer at the end of the probation. The workman was warned several time servebally to improve his performance. The claimant has apologised for his mistakci So the management has rihtly used his discretion as the claimant did not improve his work performnce though he was given a chance by extending his probation period. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad in law ?

(2) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on issues are as under :—

Issue No. 1

Issue No. 1 is whether the reference is bad in law ? The parties leadno evidence on this issue except the arguments put forward by the representative of the respondent that he claimants individual dispute cannot be termed as Industrial Dispute under section 2-A of the Industrial Disputes Act, 1947. Without any evidence and any citation on behalf of the respondent representative I do not agree with his contention to decide the reference as bad in law. So the issue is decided in favour of the workman and against the respondent

Issue No. 2

As per reference 7 On this issue the representative of the management argued on this issue that the claimant was appointed on probation,—vide Ex. W-1 on 10-12-79. The order on the application is veryclear that he was appointed on probtion at a salary of Rs. 300 p.m. The claimant was appointed on his application Ex. M-2. The report of the claimant was called by the management from the incharge section chief before ending the probation period of the claimant and the section chief reported about the claimant, vide Ex. M-3 dated 7th June, 1980 that the work of the claimant is not satisfactory and he has been warned several times verbally. The management considered the report of section incharge and Personal Officer which is Ex. M-4 and pass the orders to extend the probation for further six months, and inform the workman about the extension of the period of probation,—vide Ex. M-5 which was refused to accept by the workman and which was sent through UPC letter Ex. M-6 to inform the workman. After extension of this period upto 10th December, 1980 the report was again called from the section chief who has reported, vide Ex. M-7 dated 20th November, 1980 that the workman has not improves his performance in his work. The personal department send the letter to the Production Manager dated 18th January, 1980 which is Ex. M-8 to inform that the probation period of the claimant is to expire on 10th December, 1980. On this letter the Production Manager made a remarks that his work was not found to the mark during this period. He further argued that the workman refused to abide the order of his superior on which the workman gave in writing Ex. M-12 dated 5th April, 1980 and Ex. M-13 dated 19th November, 1980. In these letters the workman has taken the apology for not doing such thing in future. After considering the whole record the management decided to discharge the workman according to the Certified Standing Order of the Company because the workman has not improved his work during this period and he had shown no good results during this period with his superiors. He further argued that the respondent has produced MW-1 Shri C.M. Gopidas, Personal Assistant in respondent firm, who has supported the case of the respondent and proved all the documents produced in the Court. The workman's representative has crossed this witness without any material question. The workman's representative has not crossed to

prove his case that the claimant was terminated without any reason. The respondent also produced Shri Jagdish Kapoor, Section Chief of Assembly Department as MW-2, who stated that the workman work under him and he has stated in his statement that he gave the note on Ex. M-3 and Ex. M-12 and M-13 was given to him by the workman in his own hands which is sent to the Personal Department. He has stated in his cross examination that the workman refused to work so many times and he was verbally instructed so many times for these defaults. The Personal Officer of the Company has also come in the witness box as MW-3, who has stated in his statement that the claimant was appointed on probation, vide Ex. M-1 and also stated that the claimant gave to him Ex. M-2 the application, on which the form was got filled by him and appointed on probation. He has further stated that because the work of the workman was not satisfactory as reported by the Production Manager The management decided to discharge the workman. He has stated in his cross examination that the workman is having his own shop in Gurgaon City which he had seen and he is working there. He has further stated that the workman used to work on this shop when he was in the employment of the factory in the extra time. He further argued that the claimant was discharged and the information for this discharge was sent to the workman through letter Ex. M-9 stating the reason of his discharge and the same was sent through registered post, - vide Ex. M-10 and M-11 acknowledgement receipt of the same. But the workman refused to take the registered notice. Though the workman admits in his statement that one registered letter came at his address. The workman has produced one witness Shri Ved Parkash as MW-2 who is interested witness as he has admitted in his cross examination that he was suspended and dismissed employee of the company. So the respondent has rightly discharged the workman at the finishing of the probation of the workman, when his work was not satisfactory and not upto mark, which they have reported to the management. The workman was taken on probation only for the test of the workman whether he work properly or not. After judgement of work the management has the discretion to remove the probationer. There is no binding in the law that the probationer should be made permanent after probation. So there is nothing unfair and unjustified in removing the person after finishing the probationer period.

The workman's representative argued that the workman was appointed on 10th December, 1979 and not given any appointment letter. The workman was not told about the probation period of the service. The workman was also not informed about the extension of the probation period as alleged by the respondent. The workman did not receive any UPC letter sent by the respondent and no registered letter was also received by the workman. The work of the workman was satisfactory and so he worked for one year in the factory. If his work would not be satisfactory, then the respondent would not allow the workman to work for such a long time of one year. He argued that the workman was appointed on probation at the first appointment letter, then he become permanent after the expiry of this period on 10.6.80 because there is no information given to the workman for the extension period. The workman has stated in his statement that he was appointed on 10.12.79 as Junior Watch Repairer and he did not receive any type of letter before the removal and he worked upto 10.12.80 and stopped at the gate on 11.12.80 without any reason. He went at the gate for five or six days for the service but he was not allowed. He came to know about the registered letter one month after this removal and received no other information about the removal and the workman waited for three months and tried for the service but he finally failed to receive any information from the respondent. The workman gave this demand notice on 10.3.81 which is not so much delayed in filing the demand notice. He further argued that the workman has produced the workman of the same factory Shri Ved Parkash as WW-2 who has stated in his statement that he knows the workman and he worked with him in the factory, and he worked upto 10.12.80 and he was not called on 11.12.80 for any purpose by the respondent management. He further argued that the workman was removed from the services without any reason or chargesheet and enquiry against the workman

when he was a permanent employee of the factory which is against the law and the permanent employee cannot be removed in this way in which the workman has removed by the respondent. So he is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the sides and going through the file, I am of the view as stated in the order Ex.M-1 the workman was employed on probation and his probation was further extended for six months upto 10.12.1980. The workman has not defended himself and he has said nothing about the Ex. M-12 and 13 which are produced by the respondent in his evidence and stated that these were in the hand of the workmen who has apologised in writing for his mistakes, clearly prove that the workman was not working properly in the factory. If these were not the writing of the workman he should defend himself saying that these are not his writing. When he has mentioned in evidence about these documents which shows that the documents are written by the workman with his own hand and apologise in writing for his mistakes which clearly shows that the workman was not working properly. The reports of the officer and statement of the section chief also clears that the workman is not working properly up to the mark and the respondent has rightly removed the service of the workman when they found that the workman is not working properly and he is on probation and there is nothing wrong to discharge the workman after finishing the probation period. So the workman is not entitled for any relief.

This be read in answer to this reference.
Dated the 1st March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endst. No. 624, dated 11th March, 1982

Forwarded (Four copies) to the Commissioner and Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court Haryana, Faridabad.

The 10th June, 1982

No. 9(1)82-6 Lab/4992.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of the Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Elite Ceramics, Plot No. 161, Sector 24, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 22/1981
between

SHRI BACHU LAL WORKMAN AND THE MANAGEMENT OF M/S ELITE CERAMICS, PLOT NO. 161, SECTOR-24, FARIDABAD.

Present:—

Shri Darshan Singh for the workman.
Shri Satish Ahuja for the management.

AWARD

The State Government of Haryana referred the following dispute between workman Shri Bachu Lal and the management of M/s Elite Ceramics, Plot No. 161, Sector-24, Faridabad, by order No. ID/FD/132-80/6496 dated 3rd February, 1981, to this Tribunal for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Bachu Lal was justified and in order?

If not, to what relief is he entitled?

Notices were issued to the parties who appeared and filed their pleadings. On the pleadings of the parties, issue under reference was framed on 6th May, 1981.

The management examined Shri Ram Naresh Manager as MW-1 Shri Sita Ram Supervisor as MW-2 and Shri Suleharu workman as MW-3 and closed its case. The workman examined himself as WW-1 and Shri Bhagat as WW-2. Arguments were heard.

MW-1 deposed that the concerned workman was issued charge-sheet Ex. M-1. He refused to receive the same in the presence of Shri Hari Kishan and Shri Sumeh Singh. The copy of the charge-sheet was displayed at the gate and the workman was suspended. The workman had threatened him for assault outside the factory, in case, he issued the workman a charge-sheet on 26th April, 1979. At the moment, Shri Hari Kishan and Sumeh Singh were not in the employment of the management. He did not know about them where they were. The workman was taken on duty on 3rd May, 1979 because he had apologized. Second chargesheet Ex. M-2 was issued to him which he replied,—vide Ex. M-3. Another chargesheet Ex. M-4 was also issued to him which was replied,—vide Ex. M-5. He again apologized and taken on duty. He further deposed that the workman attended the duty upto 6th November, 1980 and he did not turn up after 7th November, 1980 which was holiday on account of Diwali. He did not send any application for leave either. His name was carried forward in the month of December. The workman met him early December and was asked to attend duty but he did not come. In cross-examination, he replied that the workman was secretary of the union. He used to instigate the workman for their demands. Model Standing Orders were applicable to the factory. He admitted that when the workman was issued charge-sheet, there had been a strike in the factory. The workman had not tendered his resignation or apologize in writing. The workman was not issued any letter. His name was struck off from 1st January, 1979. He was not marked absent in the register rather a dot was put against his name. MW-2 stated that on 26th April, 1979, the workmen caused his gherao. He did not give production according to the settlement nor allowed the other workers to give full production. He had made a complaint against him on which he was suspended. Later on, he was taken on duty in 1979. The workman had dis-obeyed his order. The workman used to live in the hut near by the factory. In cross-examination he replied that he had not given in writing complaint referred in his statement. MW-3 stated that the concerned workman did not attend his duty after his dispute. In cross examination he replied that the workman was a leader of the workers union. WW-1 stated that he was in the employment since 1974. His services were terminated on 7th November, 1980. He was general secretary of the union and was not paid according to the minimum wages. The case was still pending. He used to raise demands of workers to the management. His services were terminated due to the same reason. He was never issued any charge-sheet, notice or was paid notice pay. In cross-examination, he replied that he used to live in a hut about 200 yards from this factory. Shri Ram Naresh never told him to rejoin his duty. He further stated that he had no proof to show that he was secretary of the union. The cases under minimum wages Act had been decided and no further payment was allowed by the Court. He admitted having received Ex. M-2 and M-4. He also admitted his reply Ex. M-5 and M-3. WW-2 stated that he was general secretary of the union. His services were terminated in 1980.

The learned representative of the management argued that in Model Standing Orders, clause 20 (c), an absence of more than 8 days was ground on which the name of absentee workman could be struck off. He cited 1957 I-LLJ page 226 and 1958 I-LLJ page 260. He further argued that workman was issued charge-sheets and he was not a willing worker. He also argued that ruling cited by the workman that 1978 I-LLJ page 1 was not applicable as was distinguished in 1981 11-LLJ page 376. On behalf of the workman was argued that the services of the workman were terminated on account of absence which was misconduct in the standing order. No notice, charge-sheet or enquiry was held by the management as provided in the standing orders. His name was struck off on account of absence which amounted to termination. He cited 1978 I-LLJ page I and 1981, L.I.C. page 806.

I have gone through the evidence and contentions made by the parties and find that no domestic enquiry was held by the management. The real act of termination came as a result of absence of the workman as alleged by the management. It is admitted by the manager that no letter was issued to the workman in this behalf. In *D.C.M. Vs. Shambu Nath Mukerjee* was held by their Lordship of Supreme Court that "striking off name amounts to termination and retrenchment". This proposition of law was further followed in *Santosh Gupta versus State Bank of Patiala* by the Supreme Court. It is admitted that the workman had more than one year service and it is also admitted that the workman was not paid or offered any compensation as provided under section 25-F of the Industrial Disputes Act, 1947. The act of the management in terminating the service on the above facts amounts to retrenchment. Therefore, the order is bad in law. The workman is entitled to his full back wages and consequent reinstatement.

While answering the reference, I give my award that the workman was entitled to his reinstatement with full back wages and continuity of service. I order accordingly.

The 24th April, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 451, dated the 8th May, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6 Lab.5057.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Panipat Co-operative Sugar Mill, Panipat.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD
Complaints No. 1 of 1980

between

SHRI KIMIT LAL WORKMAN AND THE MANAGEMENT OF M/S PANIPAT
CO-OPERATIVE SUGAR MILLS LTD., PANIPAT.

Present.—

Shri M.S.S. Cowshish, for the workman.
Shri R.S. Malik, for the management.

AWARD

This complaint under Section 33-A of the Industrial Disputes Act was filed by the workman alleging that the management had contravened the provision of Section 33(2) during the pendency of dispute. Notice of the complaint was sent to the opposite party who appeared and filed its written statement. The following issues were framed for trial :—

- (1) Whether the complainant is a concerned workman ?
- (2) Whether the management has contravened the provision of Section 33 ? If so, to what effect ?
- (3) Whether the dismissal is unjustified on its merits ?

The workman examined himself as WW-1 and the management examined Shri Gurdial Dutt, Asstt. Purchase Officer as MW-1 and close its case.

Issue No. 1.—WW-1 stated that he was a seasonal permanent workman. He was dismissed on 5th August, 1980. At that time, reference No. 158 of 1978 was pending before the Tribunal. He was a concerned workman because item No. 4 of the reference was regarding house rent allowance to the seasonal workmen. It is amply proved from the charge-sheet copy Ex. W-1 and order of the General Manager - Ex. W-9, W-11, W-13 and W-14 that the workman was a seasonal store clerk of the mills. I have gone through the notification of reference No. 158 of 1978 in which item No. 4 is 'whether the seasonal workmen are entitled to the grant of seasonal house rent allowance ? If so with what details ?' It is correct that this reference was pending at the time of dismissal of the workman. He was a concerned workman in the pending reference, although the same was a collective dispute. Therefore, this issue is decided in favour of the workman.

Issue No. 2.—It is admitted by the parties that no application under Section 33(2)(b) of the Industrial Disputes Act, 1947 was filed by the management for approval of its action of dismissal of the concerned workman Section 33(2)(b) is as under :—

“During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman.

- (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

It is clear that the action for dismissal of the workman from services was taken during the pendency of above referred dispute and no approval application was made by the management. Therefore, it is held that the management contravened the provision of Section 33(2)(b) of the Industrial Disputes Act, 1947. This issue is decided accordingly.

Issue No. 3.—MW-1 deposed that he knew the concerned workman. He was management's representative in the enquiry which was held by Shri R.S. Malik. The proceeding of the enquiry was Ex. M-1. Letter Ex. M-2 was to the workman alongwith report Ex. M-3. Copies of Punching Cards were Ex. M-4 and M-5. Copy of enquiry report was Ex. M-6 and dismissal order was Ex. M-7. Copy of resolution of Board of management was Ex. M-8. In cross-examination he admitted that first enquiry was held by Shri J.N. Goel

and he was management's representative in that enquiry. The enquiry was held about Ex. W-1 which was charge-sheet issued to the workman. He could not recognised signature at point A on Ex. M-4 and M-5. At that time Shri M.R. Singal was boiler engineer and Shri Ved Parkash was Assistant Engineer. He further deposed that punching cards were sent for laboratory test regarding figure 189. There was no overwriting at point B in Ex. M-4 and M-5. He was in the service of the mill from last 23 years and was working on the same post from 1979. He admitted that goods were weighed when brought from outside the mill concerned engineer or some officers countersigned on the weightment. The firewood weightment was countersigned by the Shift Engineer and in the ledger also it was necessary for the engineer to countersign. WW-1 stated that he received charge-sheet Ex. W-1. His reply was Ex. W-2. Shri J.N. Goel was his enquiry officer. Copy of proceeding was Ex. W-4 and copy of enquiry report was Ex. W-5. Another notice for enquiry was Ex. W-6. Reply of the notice was Ex. W-7. He demanded copy of findings, — vide Ex. W-8. Shri Malik was appointed Enquiry Officer vide Ex. W-9 which was protested vide Ex. W-10. Notice issued by Shri Malik was Ex. W-11 and its reply was Ex. W-12. Reply of notice Ex. W-9 was Ex. W-13. Show cause notice issued by the management was Ex. W-14 which replied by Ex. W-15. Ex. W-16 and W-17 were reply of letters of the management. He further deposed that he was found innocent by Shri J.N. Goel. In cross-examination he admitted that he had received report referred in the letter alongwith notice issued by Shri R. S. Malik but the same was replied by him.

Learned representative of the workman argued that forgery was not included as misconduct in the standing order. It was also argued that first enquiry officer had exonerated the workman and it was illegal to hold fresh enquiry because there was no reason to hold second enquiry. He argued that punching cards were countersigned by the shift engineer who was responsible as the workman worked in his supervision and directions. On the other hand, Learned representative of the management argued that the workman was given full opportunity in the enquiry. Second enquiry was ordered because the management did not accept the finding of the enquiry officer. Decision was conveyed to the workman. Therefore it could not be said that the enquiry had concluded. He argued that the finding was based upon the report of Director Forensic Science Laboratory, Haryana which was a Government organisation. He argued that overwriting to increase actual weight was covered by mis-conduct 'dishonesty'. He pointed out that shift engineer appeared as a witness in the enquiry and had stated that he was only to verify about quality of fire-wood whether the same was dry or wet and not about its weight.

I have gone through the documents placed on the file and find that the workman was issued show cause notice about tempering the gross weight figure of two trucks of firewood whereby giving undue advantage to the suppliers. After his explanation the charge-sheet was issued for utilating figure 129.50 by 189.50 and 169 by 189 in the gross weight, whereby causing a financial loss of Rs 1240/- to the management. It is in evidence that the management had asked Shri J.N. Goel, Enquiry Officer to resubmit his report after considering the report of Director Forensic Laboratory, Haryana. Copy of the letter was also sent to the workman. Later on the management ordered a fresh enquiry by Shri Ranbir Singh Malik, Advocate, Panipat and copy of which was sent to the workman but he did not participate in the enquiry despite notice from the Enquiry Officer. Shri Ranbir Singh considered the evidence recorded by Shri J.N. Goel and further the Directors report and reached the conclusion that the workman had over-written figures in Ex. M-4 and M-5 whereby intentionally causing loss to the management.

I find that charge-sheet was of a serious nature. The report Ex. M-3 from the Director, Forensic Laboratory was clear that original writing 169.00 was made 189.00 in punching card dated 18th February, 1979 (Ex. M-4) and figure 129.50 was made 189.50 in punching card, dated 26th February, 1979 (Ex. M-5). It has been held that misconduct in the standing order were not exhaustive rather illustrative. Every misconduct could not be incorporated or foreseen for provision in the standing orders. Act of forgery by which the

management was put to undue loss was an act of misconduct which the management has clearly brought home. This issue is, therefore, decided against the workman.

While giving my award I held that the workman was not entitled to any relief.

Dated the 5th May, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 487, dated 11th May, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1) 82-6Lab. /5163—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Sidana Engineering Works, Sector 24, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL HARYANA, FARIDABAD

Reference No. 2/1980, 84/1980

Between

THE WORKMAN AND THE MANAGEMENT OF M/S. SIDHANA ENGINEERING
WORKS, SECTOR 24, FARIDABAD

Present:—Shri Nagesh Singh for the workman.

Shri R.C. Sharma, for the management.

AWARD

The State Government of Haryana referred the following dispute between the management of M/s. Sidhana Engineering Works, Sector 24, Faridabad and its workman, by order No. FD/78-79/58221, dated 27th December, 1979 and No. ID/FD/131-80/60552, dated 17th November, 1980 to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947:—

Whether the workmen are entitled to the grant of bonus for 1978-79? If so, at what rate and with what details?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The issue under reference was put under trial in both the cases. On the request of the parties it was ordered that two references be consolidated and evidence be recorded in reference No. of 1980. The workman examined Shri Madhuwan Clerk, Income Tax Department, Faridabad as WWI and Shri Kamla Parshad, President, Sidhana Engineering Workers Union as WW-2. Management examined Shri Darshan Parkash, Partner as MW-1.

WW-1 deposed that he had brought record of the firm from 1962-63 to 1973-74. The record of order 1974-75 onward was with the higher authority. He gave the figure of assessment of income and net profit, etc., for 1970-71 to 1973-74. In cross-examination he replied that according to the record he could not say if any doubt was raised regarding income shown in the return. WW-2 deposed that he worked in this factory from 14th May, 1979 to 11th March, 1981. Union had raised a demand notice Exhibit W-1. This company was a partnership firm with two partners. The accounts was not maintained correctly by the firm. The balance sheet were never shown to him by the management. The firm was employing 35-40 workers. Most of the job was done from out side. The workers were not paid bonus according to balance sheet. In cross-examination he replied that he had not seen the accounts of the company. He had also not seen the production record nor seen the challan of machine. Exhibit W-2 was sent by him on behalf of the union. He denied the suggestion that the workman had received the bonus for the year 1979-80 on their own free will. He denied the suggestion that the partners also worked in the factory. MW-1 stated that there were 25-26 workers in the factory. There were no manager, engineer, salesman or supervisor. He alongwith other partner Shri Anand Parkash looked after the factory. They manufactured Braiding Machine, which was sold out of Faridabad. The machines were sent through banks. Both the partners looked after the duties of production, sales and management. Balance sheet and profit and loss accounts were prepared and sent to the Income Tax Department. Exhibit M-1 to M-16 were the copies of profit and loss and balance sheet etc. Copies of the same were sent to the Income Tax Department. Bonus for the years 1978-79 and 1979-80 was paid at the rate of 8.33%. In cross-examination he replied that the accounts and balance sheets were prepared by a clerk who was B. Com. He further replied that he read upto 8th class. Accounts upto years 1979 had been assessed by the income tax authority. He denied the suggestion that Income-Tax Department had raised assessment amount. He replied that he drew a salary of Rs. 1,000 and the same amount was also drawn by the other partner. Copy of allocable surplus chart was Ex. M-17 and M-18 which was denied by him. He denied the suggestion that all the accounts were concocted.

In argument, the Learned representative for the management argued that it was a small firm. According to the profit and loss account, there was no surplus for payment of bonus and the management had paid statutory-bonus for the years under reference. The Learned representative for the workman argued that the partners were paid Rs. 24,000 as salary which was inadmissible and the same he treated as part of profit.

I have gone through the balance sheets and profit and loss accounts. The same was signed by the partners of the firm. I find from the balance sheet as on 31st March, 1980 that gross profit for the year Rs. 1,43,181.43 and net profit transferred to the partners was Rs. 9,770.45 each after provision of statutory charges. The Learned representative for the workmen could not point out any discrepancy in the balance sheet. The management also filed computation of the allocable surplus chart under Payment of Bonus Rule and there was no surplus for payment of bonus but the management had paid the bonus at the rate of 8.33%. I, therefore, pass my award that the workmen were not entitled to any increase on the rate of bonus for the year under reference.

Dated : 12th May, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

Endst. No. 501, dated the 13th May, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.